

TOWARDS A CORRUPTION FREE MALAYSIA

Introduction

Corruption is the abuse of entrusted power for private gain. It is damaging to a country because decisions are taken not for the public benefit but to serve private interests. Corruption undermines good governance, fundamentally distorts public policy, leads to misallocation of resources, and particularly hurts the poor. Controlling it is only possible with the cooperation of a wide range of stakeholders in the integrity system, including most importantly, the state, civil society, and the private sector.¹

In Malaysia, the prevalence of corruption has been acknowledged by the Government and various steps have been taken to prevent and eradicate it. Anti-corruption legislation has been enacted, an Anti-Corruption Agency established and other administrative mechanisms like the Public Complaints Bureau set up. Despite these measures however the incidence of corruption has escalated. The spread of corruption, incompetence, malpractices, abuse of power, fraud and other unethical behaviour as well as the lack of work motivation, have been attributed to the decline in integrity among individuals, organizations and society at large.²

When Dato' Seri Abdullah Ahmad Badawi became Prime Minister on 31 October 2003, he pledged to eradicate corruption and promote good governance and ethical values.³ Since assuming office, the Prime Minister has launched the National Integrity Plan and the Integrity

¹ Excerpt from Transparency International's Mission Statement.

² National Integrity Plan, p.11, para. 2

³ Statement reiterated in a Special keynote Address "Integrity – The Basis of Good Governance" at the World Ethics and Integrity Forum 2005, 28 – 29 April 2005, Kuala Lumpur.

Institute of Malaysia as new measures to combat corruption.⁴ These measures appear to be the right choice according to the following quotation:

“Integrity is one of several paths; it distinguishes itself from the others because it is the right path, and the only one upon which you will never get lost.” M. H. McKee

It must be acknowledged that dishonest officials always manage to find loopholes in the best systems. Bribes may be organized in such a way that the procedures fixed by law are circumvented. The bottom line therefore is the integrity of the individual. Each and every person must exhibit absolute integrity in the exercise of his functions. Even when he has the opportunity to take a bribe, whether one that is offered or one which he can ask for easily, he should be so motivated that he will refuse to do so. Likewise, those who are asked to pay bribes or consider offering them in order to avoid an inconvenience like a traffic summons or to obtain a benefit like a procurement contract, should be similarly motivated to refuse to pay and to act with integrity at all times even if the inability to secure a contract may mean that his small business will not prosper. To achieve this, awareness-raising of the consequences of corruption to the nation, religious education as to the sin involved and general character building is required. In other words, integrity has to be inculcated in everyone. People with integrity can be counted on to do the right thing at all times.

The National Integrity Plan [NIP]

The National Integrity Plan [NIP] emphasises the preventive approach to combating corruption by inculcating in individuals and Malaysian society as a whole, the values of honesty, integrity and ethics. The NIP has the overall objective of establishing “a fully moral and ethical

⁴ The opening of the Institute and the launch of the NIP were done simultaneously on 23 April 2004.

society whose citizens are strong in religious and spiritual values and imbued with the highest ethical standards.”⁵

The NIP will be implemented in five-year stages beginning with 2004 - 2008, named Target 2008. This first phase of the plan, has five priority targets:

- Effectively reduce corruption, malpractices and abuses of power;
- Increase efficiency in the public service delivery system and overcome bureaucratic red tape;
- Enhance corporate governance and business ethics;
- Strengthen family institution;
- Improve the quality of life and people’s well-being.

Action plans for implementing the NIP

The implementation and coordination of programmes on integrity for each component or institution is the responsibility of the agencies already in place there. In cases where such a mechanism is absent, efforts will be made to develop one⁶

An ***Integrity Agenda*** has been developed with eight strategies for:

- Family Institution
- Community
- Civil Society
- Socio-Cultural Institutions
- Religious Institutions
- Economic Institutions
- Political Institutions
- Administrative Institutions

⁵ National Integrity Plan, p. 18, para. 7

⁶ National Integrity Plan, p.35, para.5

The agenda does not target only the public sector which is perceived as the main perpetrators of corruption but aims to involve all sectors of society in the integrity programmes. This multi-prong approach is more likely to see results in the goal to increase integrity in Malaysia thereby reducing corruption.

The Integrity Institute of Malaysia [IIM]

To implement the comprehensive and somewhat ambitious NIP, the Integrity Institute of Malaysia [IIM] was established. IIM was registered as a company limited by guarantee, to ensure that all the planning, implementation, coordination, monitoring and evaluation related to the implementation of the NIP are carried out by an autonomous and independent agency. The core business of IIM includes research, reporting, communication and training in relation to integrity.⁷

Since its inception, IIM has conducted numerous courses on ethics and integrity for the public sector. These are in addition to the numerous round-table discussions and talks with professional bodies and members of the private sector. IIM has also organised conferences like the World Ethics and Integrity Forum in April 2005 and the Forum on the Construction Industry in September 2005. IIM has thus provided Malaysians with an opportunity to voice their concerns about the level of corruption and to suggest ways of addressing it, as well as promoting transparency and integrity in the country.

At this juncture however, it is not possible to assess the effect of these programmes on the participants except to say that they represent a step in the right direction.

To ensure that the staff of IIM will be able to perform the tasks required of them under the NIP, the United Nations Development Programme [UNDP] is funding a capacity building project for enhancing the

⁷ Annual Report of IIM 2004

capacity of IIM officials. With the training provided, IIM and other officials involved in the UNDP project are expected to be significantly more effective in inculcating ethical values in individuals from all sectors of society, thereby achieving the goals of the NIP.

The Anti-Corruption Academy

The creation of the Anti Corruption Academy was announced by the Prime Minister in December 2003. Believed to be the first of its kind in Asia Pacific, it is a specialized training academy established by the Anti-Corruption Agency for the purpose of training anti-corruption officers from Malaysia and across the region. The Academy will function as a regional centre for anti-corruption capacity building, promoting best practices in investigations, monitoring and enforcement, and in newer areas such as forensic accounting and forensic engineering. Although the Academy is not yet operational, it has already gained the confidence of multilateral institutions such as the Asian Development Bank (ADB) and the Organisation for Economic Cooperation and Development (OECD). The ADB/OECD Anti-Corruption Initiative Steering Committee meeting in Hanoi in April 2005, comprising anti-corruption agency heads from 20 countries and representatives from world bodies such as the World Bank, US AID, Transparency International and Pacific Basin Consultative Council, agreed that the Academy could make a valuable contribution to the training of anti-corruption professionals and that a first regional training course on “Mutual Legal Assistance” will be held at the Academy. Countries present agreed to send their anti-corruption officers to the Academy for training. This is seen as a vote of confidence by the international community for Malaysia’s anti-corruption efforts.⁸

Other preventive measures introduced in the public sector

The second approach of the government’s preventive strategy to combat corruption is to close the opportunities for corrupt activities through the

⁸ Prime Minister’s Address, supra n.3

improvement of the public service delivery system. To this end, changes have been made to existing systems and new mechanisms introduced.

The internal auditing system [IAS] established in Ministries and government departments in 1979 was revamped. A circular dated 24 November 2004 repealed the 1979 circular and set out the new objectives, functions and responsibilities of the IAS. The IAS will be responsible for auditing monetary and financial management including verifying that all expenditure, profits and assets and stock have been managed according to the relevant law, rules and regulations. With this new improved system, it is envisaged that fraud, forgery and embezzlement of the Ministries' and government departments' assets and interests will be eradicated.

The Public Complaints Bureau [PCB] which receives complaints against government departments has introduced the MESRA Rakyat programme in which the PCB travels round the country to meet local residents and receive complaints from them. Government department heads are also present at these meet-the-people sessions to discuss the complaints of the people. This move appears to be successful. For example, on 22 July 2004, at a session in Melaka state, 278 members of the public and 49 heads of department attended and 40 issues were raised. Before the introduction of this programme, the major defect of the PCB was that the procedure for submitting complaints was complex and the follow-up unsatisfactory. This new process will encourage people to come forward with their complaints against the public sector and will give the people's voice a chance to be heard by the departments concerned. The officer in charge of the programme reports that of the 40 cases brought up in July 2004, 37 have been settled and three are still pending. The cases relating to corruption were referred to the Anti Corruption Agency [ACA] for investigation and further action. PCB will monitor to ensure that action is being taken. In this way, the MESRA Rakyat programme ensures that the ordinary man's complaint about corruption issues are taken up by the ACA.

The Central Bank of Malaysia or Bank Negara Malaysia [BNM] introduced **LINK** in February 2005 to facilitate a rapid and effective response to members of the public and small and medium enterprises [SME] in matters related to the financial sector particularly public complaints. **LINK**, the Bahasa Malaysia acronym for Information, Advice and Services Website, provides an avenue for wider public redress with the potential of encouraging whistleblowers, both internally within the system and externally amongst members of the public, to disclose unethical practices, fraud and corruption in the financial sector.

In addition, SMEs have a special unit to assist in obtaining financing from sources alternative to the banking system such as the development financial institutions and the various special funds established by the government in several Ministries and government agencies. These funds are listed in a government publication entitled “Funds and schemes for small and medium enterprises provided by the Government of Malaysia”. This is distributed free of charge by **LINK**.

Another public complaints and redress forum is the **Financial Mediation Bureau [FMB]**, launched in January. It is an integrated dispute resolution centre for financial institutions. FMB’s predecessors, the Banking Mediation Bureau and the Insurance Mediation Bureau, handled a total of 1,515 cases in 2004. The FMB provides an avenue of redress for a wider spectrum of the public since it covers the consumer areas of Islamic insurance, development finance institutions, as well as non-bank issuers of credit and charge cards.

Procurement policies on the mend

In November 2004, a local newspaper carried a front-page story on seriously defective buildings and roads.⁹ The immediate response of the Minister of Works was that the 2 billion ringgit fiasco was not the fault of the Public Works Department [PWD] but of a group of contractors

⁹ New Straits Times, November 2004

known as PMC – Project Management Consultant. PMC was a consultant consortium registered with the Finance Ministry comprising several contractors who would be awarded projects through direct negotiations, circumventing procurement regulations. PMC was started in the 1990s and a Treasury circular effective for the period September 2000 through August 2001 sanctioned some privileged PMC consortia to cover five regions and exempted government departments from following the procurement procedures. This practice allowed government agencies to carry out their own projects through limited tender or direct negotiations. The usual procedure had been to go through the Public Works Department and only if they were unable to take on the job, other parties would be appointed. With the introduction of the PMC, the Public Works Department was by-passed. The justification for this new procedure was the speedy completion of projects. However, the cost for some projects almost doubled. It was reported that the PMC concept, with consultancy fee fixed at 1.5% of project cost, had contributed to massive cost overruns and individual project failures.¹⁰ Examples are:

- A classroom that PWD could construct at RM55,000, when taken over by PMC would cost RM95,000 but it was normal for PMC to exceed even RM120,000.¹¹
- Work on the RM167 million MATRADE (Malaysian External Trade Development Corporation) building began in 1994 and was scheduled to be completed in 1997 but till 2004 the building could not be occupied. It was reported that repairs to the defects in the building would cost RM28.4 million.¹²

It was with relief therefore that Malaysians subsequently learnt that the PMC had in fact been abolished in March 2004 by the present Prime Minister in his first year in office. Government departments have since

¹⁰ Opposition Leader Lim Kit Siang, calling on the government to present a White Paper on all projects handled by PMC.

¹¹ Interview with the Works Minister, Dato' Seri Samy Vellu, Utusan Online, 14 November 2004

¹² Bernama, 22 October 2004

been directed to comply with current procurement policies with the enhanced use of the open tender system which is meant to ensure transparency and accountability in the procurement process.

A Treasury circular of 14 December 2004, for example, provides guidelines for the selection of contractors for public infrastructure maintenance. The terms set out in the circular detail the use of open tenders and the participation of a more balanced group of public officials including a representative of the Public Works Department. These conditions are designed to ensure transparency in the procurement process and a more equitable distribution of contracts. Although they cover only one area of public procurement in the country, they are additional to existing procurement procedures and apply to all government departments.

The guidelines comply with the “Model Law on Procurement of Goods, Construction and Services” issued in 1995 by the UN Commission on International Trade Law.

Integrity Pacts

In addition to a transparent procurement process, the introduction of Integrity Pacts would further ensure that public contracting is free from corruption. Under an Integrity Pact, bidders competing for the supply of goods and services provide a binding assurance that they have not paid any bribes in order to obtain this contract, and an undertaking that they will not do so in future. If this undertaking is breached, pre-agreed sanctions, including blacklisting, can be enforced. The Government department or agency also signs an undertaking not to demand or accept bribes, and guaranteeing access to information and the publication of the award decision. An arbitration process is built into the Integrity Pact to strengthen enforcement of its provisions. Civil society groups could be brought in to monitor the contracting process as has been done in several countries which have introduced Integrity Pacts, successfully

reducing public expenditure.¹³ The Malaysian Government should now seriously consider adding Integrity Pacts to the procurement process.

Other Government Initiatives

Royal Commission on Police

The Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police [RCP] was appointed in February 2004 to make recommendations “to change the mindset and values of members of the police force [PDRM] so as to improve their service and to adopt zero tolerance towards corruption.”¹⁴ Throughout 2004, the RCP received submissions, complaints and feedback from civil society groups and individual members of the public. TI Malaysia submitted a memorandum on 12 August with recommendations for overcoming corruption in PDRM. The RCP submitted its report to the King on 29 April 2005 and the report was made public on 16 May. It is heartening to note from the Report that the RCP has given serious consideration to the question of corruption in PDRM and has adopted some of the recommendations of TI Malaysia.

Of the 926 complaints the RCP received from the public between March 2004 and March 2005, 98 were on police corruption. The RCP’s Inquiries revealed widespread corruption within PDRM. Eight pages of the Report give examples of the forms that corruption in PDRM take. These include collecting monthly payments from illegal factory owners and employers of illegal immigrants; demanding payment for providing food in the police lock-up to detainees or for allowing them to make a telephone call; accepting bribes for not acting against people guilty of committing offences or for detaining and investigating innocent people. It was also alleged that police personnel gave bribes to senior officers to get promotions or transfers. The evidence of corruption, say

¹³ Transparency International, 1993 – 2003, Ten Years Fighting Corruption, 2003.

¹⁴ Statement by Prime Minister when announcing his decision to appoint a commission in Malaysiakini, 6 February 2004.

complainants, is the lavish lifestyle of some officers. One officer is alleged to have declared assets of RM34 million but no investigation was carried out to determine how he acquired such a vast fortune. Influenced also by the finding of a survey it conducted among police personnel, that corruption awareness is significantly low among personnel of all levels, the RCP concluded that the elimination of corruption in PDRM must rank high in the reform agenda.

The RCP identified nine challenges confronting PDRM of which corruption in PDRM is ranked third. It made 125 recommendations of which 10 relate specifically to eradicating corruption.¹⁵ The first of these 10 recommendations is to make eradicating police corruption one of the top three priorities of PDRM.¹⁶ The Action Plan that sets out the time-frame for completing the implementation of all recommendations has fixed June 2005 for this first step.

All RPC recommendations relating to corruption have been given a short time to be implemented. For example, the recommendation for PDRM to launch joint operations with other law enforcement agencies,¹⁷ was to be implemented by August 2005 while most of the others were given till December 2005 :

- Adopt a proactive anti-corruption strategy.
- Develop education and training programmes to encourage culture of honesty and integrity.
- Review and strengthen PDRM's anti-corruption mechanism in the Disciplinary Division.
- Establish an Audit Management Unit.
- Implement regular job rotations and tenure limitation (as some departments provide greater opportunities for corruption).

¹⁵ Recommendations 46 -55

¹⁶ The other two priorities are reducing crime and compliance with prescribed laws and human rights.

¹⁷ Recommendation 53

- Payment of compounds for traffic offences at banks and post offices.

Only two have a target date of May 2006:

- Amend laws such as the Anti-Corruption Act, regulations and work procedures.
- Improve and rigorously implement the declaration of assets requirement.

Perhaps the prescribed time-frame was to underscore the urgency in taking action and was meant to be the catalyst for immediate and concerted effort to eradicate corruption as well as to implement the other recommendations for improving PDRM. Regrettably, six months has gone by and the only action taken has been to set up five sub-committees to study the recommendations. The five sub-committees are:

- Human Resource Management chaired by the Public Services Department Director General;
- Logistics and Finance chaired by the Internal Security Ministry Secretary General;
- Premises and Buildings chaired by the Internal Security Ministry Secretary general;
- Police Work Ethics and Management Modernisation chaired by MAMPU Secretary General;
- Law and Regulations chaired by the Attorney General.

According to the Deputy Secretary General of the Internal Security Ministry, the five sub-committees have reported back to a coordinating committee headed by the ministry's Secretary General.¹⁸

In the interest of transparency, the reports of these subcommittees should be made public. Where RPC proposals have been accepted, they should be implemented without further delay. Where proposals are

¹⁸ The Star, 17 November 2005

being rejected or delayed, reasons given for the inability to implement them should be discussed in an open public forum.

Penalties after the event

The punitive aspect of an anti-corruption strategy comes into play when preventive measures fail. Given that Malaysia's prevention strategy is relatively new, complaints of various forms of corruption and abuse of power abound.¹⁹ The body responsible for investigating these complaints is the Anti-Corruption Agency.

The Anti Corruption Agency [ACA]

The existence and operation of the long standing Anti-Corruption Agency [ACA] was reiterated in the Anti-Corruption Act 1997 (Act 575).²⁰ The ACA has been perceived as targeting only small and middling fish with little impact on corruption in high places.²¹ The reason advanced for this situation is that the final decision to prosecute an individual rests with the Public Prosecutor.²²

The Public Prosecutor is the Attorney General,²³ who is appointed by the Yang di-Pertuan Agong (the King) on the advice of the Prime Minister.²⁴ The public perception therefore is that it is this process of appointment of the Attorney General that leads to the non-prosecution

¹⁹ The Anti-Corruption Agency received a total of 38,471 complaints between 2001 and 2004, of which only 3,766 were investigated. Malaysiakini report on 7 July 2005 of the written response by the Deputy Minister in the Prime Minister's Department to a parliamentary question.

²⁰ Section 3(1), Act 575 which repealed the Prevention of Corruption Act 1961 and the Anti-Corruption Agency Act 1982.

²¹ National Integrity Systems, Country Study Report, Malaysia 2003. p.32

²² Section 50, Act 575

²³ The Public Prosecutor is the Attorney General who "shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings for an offence before a Syariah Court, a native court or a court-martial." Article 145(3), Federal Constitution

²⁴ Article 145 (1)

of senior government ministers investigated and recommended for prosecution by the ACA.

The appointment of the ACA Director-General [DG] is also made by the King on the advice of the Prime Minister. The appointee must be a member of the public services and the period of his appointment and the terms and conditions of service will be specified in the instrument of appointment.²⁵ This raises the question of the independence of the DG and consequently that of the ACA.

One suggestion is that the appointing mechanism ensures consensus support for an appointee through Parliament rather than government, and that an accountability mechanism exists outside government, for example, a Parliamentary Select Committee on which all major parties are represented.²⁶ Whatever mechanism is introduced, the appointment process must ensure that an independent person of integrity is likely to be appointed, and that such person is adequately protected while in office. The DG should also be afforded the same rights of tenure of office as those enjoyed by a superior court judge. Removal from office should only be in accordance with a prescribed and open procedure, and only on the grounds of incompetence or misbehaviour, and never at the discretion of the executive.

Perhaps the same appointment process could be instituted for the Attorney General.

Anti-Money Laundering and Anti-Terrorism Financing Act 2001²⁷

Like the Anti-Corruption Act, other laws that could curb corruption have a poor level of enforcement. For example, the first prosecution

²⁵ Section 3(2), Act 575

²⁶ Jeremy Pope, *Confronting Corruption: The Elements of a National Integrity System*, TI Source Book 2000, p 97.

²⁷ Act 613 as amended by Act A1208 in December 2003 to add provisions relating to anti-terrorism financing.

under the Anti-Money Laundering Act 2001 (before it was amended) was instituted only in 2004. The delay in enforcement of the law was said to be due to investigations being carried out and evidence being gathered before suspects could be brought to court. It is envisaged that there will be a spate of prosecutions in the near future.²⁸

Reducing Corruption in Politics

Political corruption is the abuse of entrusted power by political leaders for private gain. It can take many forms, ranging from vote buying and the use of illicit funds to the sale of appointments and the abuse of state resources.²⁹ In Malaysia, in 2004, political parties attempted to address vote-buying in party elections.

Money Politics

Money politics or vote-buying appears to be rampant in party elections. Prior to the general assembly in September 2004 of the United Malays National Organisation [UMNO], the Prime Minister's political party, the party elections resulted in 160 complaints of Breaches of the UMNO Code of Ethics. In July 2004³⁰ UMNO, held elections for office bearers of 195 divisions, each division corresponding to a parliamentary constituency in all but the state of Sarawak. These divisional elections are important as each division will also select seven representatives who, together with the six office bearers, will be the delegates from the division to the Annual General Assembly which elects the members of the Supreme Council. A position in the Supreme Council is the passport to the Cabinet. It is not surprising therefore to have allegations of money politics or vote buying in relation to these elections. Between July 2004 and April 2005, 402 complaints were received.

²⁸ Information provided by a Deputy Public Prosecutor in the Attorney General's Chambers

²⁹ Transparency International, Global Corruption Report 2004, p.1

³⁰ Divisions had to hold their elections between 1st and 30th July.

The Disciplinary Board, comprising 19 members who do not hold any position in the party, is responsible for the enforcement of the party's Code of Ethics. Sitting as five Tribunals each with three members, the Board heard 160 complaints, the others having been classified as unsubstantiated allegations, some in the form of *surat layang* or anonymous letters.³¹ The Disciplinary Board's Chairman said that most of the cases involved breaches of the following provisions of the Code of Ethics:

- Article 2.2 : "offering or accepting or allowing the offer of money on his behalf".
- Article 4.2 : "to act as lobbyist, agent, campaign manager and vote canvasser for candidates".
- Article 5 : "hosting of functions and gatherings for UMNO members relating to any party elections."³²

The Disciplinary Board found that 99 of the cases heard were not proven, 61 resulted in a guilty verdict, with punishments ranging from warnings for 15 to suspensions for 46, for varying periods, the longest being for two terms of office or six years. 32 have appealed.³³

The main complaint against this procedure was that there were no regulations to guide the Disciplinary Board which exercised discretion in carrying out its function. The fact that action was taken by the Board despite the absence of regulations to guide its procedure could be interpreted as the party's desire to put an end to money politics and corruption among its party members. However, the lack of rules and procedures could lead to a miscarriage of justice. UMNO is now looking into the possibility of drafting regulations for the Board and also the establishment of an independent Investigation Board to assist

³¹ Information provided by the Legal Adviser to the Disciplinary Board in an interview on 20 May 2005.

³² Bernama, 15 September 2005

³³ The Star, 17 April 2005

the Disciplinary Board to decide if there exists a prima facie case before the case is taken further.³⁴

One minister³⁵ however has suggested that money politics and all other forms of political corruption should be handled by the courts and made subject to the Anti-Corruption Act or other criminal laws. This view is supported by a former Deputy Prime Minister who was speaking at the World Ethics and Integrity Forum 2005 held in Kuala Lumpur in April 2005. Although the Disciplinary Board has suspended a member of the Supreme Council which appoints the Disciplinary Board under Article 20 of UMNO's constitution, resulting in his resignation as a Minister, thereby proving their independence and impartiality, the Prime Minister should nevertheless seriously consider the suggestion made above.

Because the Supreme Council is elected by a little more than 2000 delegates at the General Assembly, money politics can be practised. One proposal to curtail vote-buying is to make the election of UMNO Supreme Council members at divisional level where the number of voters would be close to 20,000, thus making vote-buying prohibitive.

Code of Ethics for Members of Parliament

The Cabinet has approved a Code of Ethics³⁶ that requires elected representatives to declare their assets every two years in detail, listing their local and overseas bank accounts, landed property, vehicles, jewellery, their direct or proxy stakes in companies and the number of shares held.³⁷ MPs also have to report on their work every three months³⁸ so that the Prime Minister's Department can monitor the performance of MPs. There is no information however as to how far the

³⁴ Bernama, 28 April 2005

³⁵ Culture, Arts and Heritage Minister, Datuk Seri Utama Dr. Rais Yatim

³⁶ The Star, 2 April 2004

³⁷ New Straits Times, 22 April 2004

³⁸ The Sun, 20 April 2004

Code is being implemented and whether any sanctions have been imposed for breaches of the Code.

An independent body needs to be established to receive and investigate, if necessary, all declarations of assets from elected representatives and public servants including police personnel. Without such a mechanism to monitor and evaluate the declarations, they would be no more than just a collection of paper with no effect on reducing corruption.

The Public Accounts Committee

The Public Accounts Committee [PAC], appointed when a new session of Parliament commences, examines the Auditor-General's report which has to be submitted to the Yang di-Pertuan Agong who then shall cause it to be laid before the House of Representatives, the *Dewan Rakyat*.³⁹ The report relates to the accounts of the federation and the States which have been audited by the Auditor-General.⁴⁰ The PAC will identify areas in the report which warrant explanation. The Chairman of PAC may request relevant agencies or ministries to respond to queries of non-conformity raised in the Auditor-General's report. The PAC has an important role to play in initiating action on concerns expressed in the Auditor-General's report. The Auditor-General highlights serious inefficiencies in federal and state level departments and agencies but unless the irregularities exposed are checked, they will be repeated year after year.⁴¹

The current PAC is strong with a former Minister and president of the Backbenchers Club as Chairman, and a member of the opposition as Deputy Chairman, with three opposition MPs as members. PAC must act to ensure financial accountability on the part of government agencies and departments.

³⁹ Article 107(1), Federal Constitution.

⁴⁰ Article 106(1), Federal Constitution

⁴¹ National Integrity Systems, Malaysia Country Report, 2003

The Role of the Private Sector in Curbing Corruption⁴²

The private sector is perceived as the “giver” of bribes while public officials are regarded as the “receivers”. However both aspects of bribery do occur in the private sector. The seriousness of the situation led to the formulation of the Anti-Bribery Convention in 1999 of the Organisation for Economic Cooperation and Development [OECD] to control and prevent multinational companies from giving bribes. Enforcement in signatory countries however has been poor.

In Malaysia, the financial crisis in 1997 led to the setting up of a High Level Finance committee a year later. This led to the formulation of the Malaysian Code of Corporate Governance [MCCG] in 2000. The code sets out best practices for corporate governance for companies to apply to their organizations. Initially the private sector did not heed the MCCG but this changed in January 2001 when the Malaysian Securities Exchange Berhad [MSEB] enforced the Revamped Listing Requirements and implemented the Code. While MSEB does not make it mandatory for listed companies on the Kuala Lumpur Stock Exchange [KLSE] to comply with the principles and best practices of MCCG, these companies are required to be transparent by making disclosures as required by Listing Requirements. Every company is required to include in its annual report a statement concerning corporate governance, to indicate how the principles contained in MCCG are being applied and how far the code is being observed. In cases where there is non-compliance with the code, the company must provide an explanation of alternative practices that they have put in place. In this way, the companies have to enhance their transparency and accountability.⁴³

In 2002, the Ministry of Domestic Trade and Consumer Affairs introduced a code of business ethics known as *Rukuniaga Malaysia* which has been adopted by many companies as a guide for their

⁴² The information for this section was taken from the National Integrity Plan, pp 6 - 8

⁴³ National Integrity Plan, p.8

business operations. The code outlines six principles for conducting business:

- Honesty in doing business;
- Responsibility to clients, society and environment;
- Being humane to all;
- Fairness to clients
- Determination to succeed in business.

In addition, there are the Minority Shareholder Watchdog Group and the Malaysian Code on Take-overs and Mergers, requiring higher standards of disclosure and corporate behaviour from those involved in mergers and acquisitions.

Other institutions that have produced a Code of Business Ethics are the Malaysian Institute of Corporate Governance [MICG] and the Business Ethics Institute of Malaysia which also conducts an ethics programme for businesses.

A transformation manual that includes strategies aimed at enhancing corporate governance, developing social leaders and clarifying social obligations has been launched by the Prime Minister to assist government linked companies [GLC] to become global champions.⁴⁴

The MICG is in the process of developing a Corporate Governance Rating to promote good corporate governance in the country. It is envisaged that when the rating is ready, the GLCs will be the first to be subjected to the rating.

On an international level, standards that have been introduced and which could be adopted by Malaysian companies are:

- The Business Principles for Countering Bribery was launched by Transparency International and Social Accountability International in 2002. The Business Principles served as the

⁴⁴ The Star, 30 July 2005

basis for an initiative of the World Economic Forum through which some 63 countries have signed up publicly to a policy of zero tolerance to bribery.⁴⁵

- The United Nations Global Compact has added the 10th principle that “Businesses should work against corruption in all its forms, including extortion and bribery.” The Compact has a sign-up mechanism. CEOs can send a letter accepting the Global Compact. The programme refers to the Total Approach by the company towards the prohibition of bribery principle. There must be protection for whistleblowers and a “hot-line” for complaints to be made by employees and suppliers.

Professional Bodies

Professional bodies like the Malaysian Bar, the Malaysian Medical Association, the Malaysian Board of Engineers, the Malaysian Board of Architects and the Association of Chartered Accountants have their own rules or codes of ethics. In addition, those seeking admission to practice their professions are required to attend an ethics course.

The Malaysian Medical Association has launched a public directory which is available at <http://www.mma.org.my/> or <http://www.hospitals-malaysia.org/>. The directory, besides being a useful tool to the public, may be an effective antidote to the rising number of illegal medical practitioners in the country⁴⁶ as it will list the location of registered and legal medical clinics, specialists, or hospital-based facilities and services.⁴⁷

The Patient Safety Council,⁴⁸ comprising representatives from the ministries, hospitals, private sector, non-governmental organisations and

⁴⁵ Transparency International Annual Report 2004, p. 6

⁴⁶ The Star, 1 July 2004

⁴⁷ <http://www.mma.org.my/>, 3rd April 2002

⁴⁸ New Straits Times 14 September 2004

the Federation of Malaysian Consumers Associations was established to promote an open and fair culture across the healthcare system that would encourage reporting of incidents confidentially, without fear of personal reprimand or disciplinary action, so that lessons may be learnt and preventive measures against recurrence may be instituted.⁴⁹

Other civil society groups

Consumer associations, teachers' associations, associations of care providers and environmental organizations all have their own code of ethics. There are also civil society organizations that monitor adherence to ethical values such as human rights, good governance and transparency, as well as the electoral process and democracy in Malaysia.⁵⁰

Several civil society groups including Transparency International Malaysia [TI-M] have formed a coalition to carry out a campaign for greater access to information including the enacting of an Access to Information Act. **Infokl** was formed after a conference on Freedom of Information (FOI) agreed on the general principles for inclusion in a FOI Act, and it was decided that a petition would be presented to the government calling for the law to be passed. The Centre for Independent Journalism is the focal point for infokl which will embark on the drafting of a bill for submission to the government.

Two other issues closely related to FOI which will also be raised are freedom of the press and a review of the legislation that curtails press freedom.

Another NGO, Pusat Komunikasi Masyarakat or KOMAS, conducted a training programme for film-makers on the theme Freedom of Information [FOI]. Participants were not only taught the basics of film-

⁴⁹ Speech by Dato' Dr. Chua Soi Lek, Minister of Health Malaysia, at the *Accreditation Presentation Ceremony, Aushealth Gleneagles Oncology Centre*, Kuala Lumpur, 28 September 2004

⁵⁰ National Integrity Plan, p. 9

making, they were also informed of FOI principles and the issues surrounding FOI. The films they had to produce were based on the FOI concept. This is a truly innovative way of raising awareness among members of the public.

From the discussion above, it is clear that all sectors of society are involved in trying to reduce corruption. These efforts however will not be very effective if the following important matters are not addressed.

Access to Information⁵¹

“Ordinary citizens need access to government-held information in order to exercise their rights in just about every phase of their lives ...Without it, they are ready prey to the corrupt and the abusive.”

Transparency International Global Corruption Report 2003, p.14

The fight for information is between the public who want it and those in power who do not want them to have it. This fight is unnecessary as there are clear advantages for an administration to be open and to provide information. Some of the benefits of access to information are:

- An informed public can participate better in the democratic process;
- Parliament, the press and the public will be able to follow and scrutinize the actions of government; secrecy is a major impediment to this accountability;
- Public servants make important decisions which affect many people, and to be accountable, the administration must provide information about what they are doing;
- Information produces more effective government, increasing the quality of administration significantly;

⁵¹ The material for this part, unless otherwise stated, is from Chapter 24 of the TI Source Book 2000. Confronting Corruption: The Elements of a National Integrity System by Jeremy Pope

- Public cooperation with the government will be enhanced by more information being available.

Access to Information Legislation

Legislation is the most effective means of providing the right to information. Essential features of Access to Information legislation are:

- It confers a right to know that can be enforced;
- It seeks to change the culture of secrecy within the civil service;
- It provides for access to records and not just information;
- It sets out the exemptions, for example, national security;
- It defines rights of appeal.
- It imposes on governments the obligation to facilitate access to information and provides sanctions for non-compliance.

The law should also include provisions requiring agencies subject to the law, to publish information relating to:

- Their structure, functions and operations;
- The classes of records held by them;
- Arrangements for access; and
- The internal procedures used by the agency in the conduct of its business.

The law should give citizens the right to ask for copies of documents and the fees for providing these copies should not be prohibitive. There should also be time limits for responding to requests. Failure to comply or the imposition of unreasonable charges should be grounds for an appeal. When access to records is denied, the requester must be informed of the reasons for the refusal, citing the particular exemption.

Records Management

The right to information is meaningless if the records are kept in a chaotic manner or in a form that is not easily understood. A nation-wide government records management policy is essential. Not only

must the records exist, but they must also be accurate, complete and readily accessible in a form and language that is easily understandable by those who need them. Major documents could be placed on the Internet. Not everyone however has access to technology but everyone has the right to contribute to decisions that affect them. This then places a responsibility on the mass media to engage in investigative journalism and report on the actions of government.

The Official Secrets Act 1972, Act 88⁵²

An Access to Information law is meaningless if the Official Secrets Act [OSA] continues to be used indiscriminately. Classifying a document as an official secret will effectively prevent the public from obtaining access to it. There is a need therefore to review the OSA, amending in particular, the penal provisions that have facilitated the suppression of information relating to malpractices in government administration. When the Access to Information Act is enacted, the OSA can be repealed if the Access law provides for exemptions, that is, classes of documents which are not accessible to the public. With exemptions in the Access to Information Act, the OSA becomes redundant.

Protection of Whistleblowers

The infokl group plans to include provisions for the protection of whistleblowers in the Access to Information law that they are drafting. Another view however is that whistleblower's protection should be comprehensively provided for in a law enacted specially for that purpose. At present, the Anti-Corruption Act has one provision for the protection of informers and information.⁵³ The Anti-Money Laundering Act has a similar provision.⁵⁴

⁵² Revised in 1988

⁵³ Section 53

⁵⁴ Section 5

Freedom of the Press⁵⁵

Access to information can result in a deluge of information. What society needs is a diligent and professional media to sift through the mass of information on a daily basis and to select with wisdom, matters of public interest, and convey the information in a fair and responsible manner. The media however is conflicted by the desire to attract a wide readership, ample advertising and a healthy profit margin. Nevertheless, a free media is a powerful counterforce to corruption in public life. The media has a special role to play in countering corruption but it can only do this if it is independent. Independence of the media focuses on the notion that journalists should be free from any form of interference in the pursuit and practice of their profession. Apart from the restraints imposed by laws on defamation and sedition, journalists in Malaysia are controlled by the owners of the newspapers who are concerned about the law that regulates licencing.

The Printing Presses and Publications Act 1984, Act 301 [PPPA]

The PPPA provides for licensing of presses and publishers annually. The Minister has the absolute discretion to refuse an application for a licence, and to revoke or suspend permits that have been granted indefinitely. His decisions are not subject to judicial review. This Act has resulted in self-censorship for there is that fear that the newspaper will have to close down if its licence is revoked. If the media is to engage in investigative journalism and expose corruption, it must be free from this threat. The PPPA needs to be reviewed and amended.

An Independent Judiciary

Like the media, the Judiciary should be independent. Independence protects the Judiciary from the Executive and the Legislature. An independent, impartial and informed Judiciary holds a central place in the realization of a just, honest, open and accountable government. Judicial independence relates to the institution – independence is not

⁵⁵ Information for this part is taken from Chapter 14 of TI Source Book 2000.

designed to benefit an individual judge, or even the judiciary as a body. It is designed to protect the people.⁵⁶

In Malaysia, issues relating to the Judiciary that affect its independence is the appointment and promotion of judges. The Federal Constitution provides for the appointment of judges of the Federal Court, Court of Appeal and High Courts.⁵⁷ The appointment is made by the Yang di-Pertuan Agong, acting on the advice of the Prime Minister, after consulting the Conference of Rulers. This process gives the Executive a major say in the selection process and should be amended to provide for a selection by a Judicial Commission. The public must be confident that judges are chosen on merit and for their individual integrity and ability. Likewise, promotion should be based on outstanding professional competence and not as a reward for dubious decisions favouring the Executive.

Judges Code of Conduct

Judges of the Federal Court are subject to a Code of Ethics⁵⁸ and may be referred to a Tribunal to consider any breach of the code.⁵⁹ If the Tribunal so recommends, the judge may be removed from office. The constitutional provisions relating to Federal Court judges extend to judges of the Court of Appeal and High Court.⁶⁰

Judicial Administration

There is opportunity for corruption to flourish within the administration of the courts, from the manipulation of files by court staff to the mismanagement of the assignment of cases. The Judiciary must be empowered to manage the courts to curb corruption in the system.

⁵⁶ TI Source Book 2000, Chapter 8, p.63

⁵⁷ Article 122B, Federal Constitution.

⁵⁸ Article 125(3A), Federal Constitution

⁵⁹ Article 125(3), Federal Constitution

⁶⁰ Article 125(9), Federal Constitution

Judges of integrity alone are not enough to maintain public confidence in the judicial system if the administration surrounding them is tarnished by corrupt practices.

The Ombudsman⁶¹

The Ombudsman is an Office which independently receives and investigates allegations of maladministration. It is distinguished from other mechanisms like the Public Complaints Bureau by its independence.

The office of the ombudsman was created in Sweden by King Charles XII who was influenced by the example of the second Muslim Caliph, Umar and the concept of Qadi al Qadat developed in the Muslim world. It is not entirely new to Malaysia as the PAS government in Terengganu had instituted the office which was then held by Tun Salleh Abbas, the Lord President whose removal from the highest judicial office in a questionable manner, led to the decline in public confidence in the Judiciary.

The primary function of the ombudsman is to examine:

- (i) a decision, process, recommendation, act of omission or commission which is
 - (a) contrary to law, rules or regulations, or is a departure from established practice or procedure, unless it is bona fide and has a valid reason;
 - (b) perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory;
 - (c) based on irrelevant grounds or involves the exercise of powers or the failure or refusal to do so for reasons of corrupt or improper motives such as bribery, nepotism or administrative excesses.

⁶¹ This part is reproduced from Chapter 10, TI Source Book 2000.

- (ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities.

The Ombudsman can also hear appeals from individuals denied information under an Access to Information Act when it is enacted.

If the Government is serious about improving public administration and reducing corruption, it should establish as soon as possible, the office of the Ombudsman with safeguards for its independence and protection from influence by the executive, politicians and civil servants. The selection of the individual for appointment to the office should be through a process that will ensure that a truly independent person of the highest integrity is appointed.

The UN Convention Against Corruption

The UN Convention Against Corruption is the first global convention against corruption.⁶² It took more than ten years to get it passed and will come into force ninety days after the thirtieth ratification. Although 126 states have signed the Convention, very few have ratified as the obligations arising under the convention may be difficult to implement.

The convention requires states to criminalize certain offences, provide for international cooperation, legislate preventive measures like a code of conduct for public servants and the declaration of assets, and aid in the recovery of illicit funds. Governments must create an environment of transparency and accountability in public administration and corporate governance as the Convention targets both the public and private sectors.

The task ahead may seem overwhelming but assistance has been provided in the form of a draft legislative guide prepared by the UN

⁶² The other two are the OECD Anti-Bribery Convention and the Inter-American Convention Against Corruption.

Office on Drugs and Crime to promote the implementation of the Convention. This checklist can be used by the Attorney General's Chambers to determine how far we are already in compliance with the requirements and what else needs to be done.

Ratification of the Convention will underscore Malaysia's determination to address corruption.

CONCLUSION

The review of efforts that have been made in Malaysia to combat corruption is encouraging but it is also clear that some of the major issues discussed above need to be addressed if Malaysia hopes to succeed in its attempt to reduce corruption.

Matters like access to information, a free press, an independent judiciary and the establishment of an ombudsman are not difficult to achieve. The steps that need to be taken are clear. All that is required is political will. The Prime Minister has clearly expressed the wish to reduce corruption in Malaysia. The people are right behind him and can be counted on for support. All that needs to be done is to weed out the corrupt elements in our society by stepping up prosecutions. Then, by inculcating integrity in every individual, we can achieve our goal of a corruption free Malaysia.